

1952.

File No. O Ferris/52

Legal Department-

A BRANCH

P.11 (6)



Subject:— Opinions Under the

Bombay Ferries and Inland

Vessels Act, 1868.

File No. O Ferris/52

416-A

GOVERNMENT

Legal Department File No. O Ferries/32.

No.	Copy No.	1952. Subject	Pages.
		O Ferries 1952. Opinions under the Bombay Ferries and Bridges Act, 1938.	
1.	on 5252 8-4-52.	Re: Claim of W. J. S. to half the amount of the ferry charges levied for the year 1949-50 -- Ferry at Anwar river near to the station of Bombay.	1.
2.	on 9149 8-6-52.	Can W. J. S. claim his private ferry for carrying his goods across that part of river as a public ferry? If not whether he is liable to pay for or toll to the ferry counterfactors.	3.
3.	on 11535 14-7-52.	Whether under the said Act, if Allied is entitled to half the revenue of the villages in the Gundol Patal (Bijapur) his claim for half the ferry proceeds will have to be recognized --	6-7.
4.	on 12102 25-7-52.	Whether it is permissible to the L. & B. to purchase in the absence of bidder at a nominal bid of Rs. 4/- properties of the contractor, not put on auction for recovering of fine in respect of public services vesting in the L. & B. --	9-11.
5.	on 16274 8-10-52.	Purchasing the property for a nominal bid provided due notice of such purchase is given to the Collector	15.
6.	on 17568 24-10-52.	If the provisions of the grant of licence under sec 141, have no application to the steamer service Sec 141 whether Collector can at all grant a licence thereunder.	15.
7.	on 18187/A 1-11-52.	Whether or not it is necessary for the State Govt. to vest ferry in a tank (or any collection of water) already vested in the same Municipality or the L. & B.	17.
8.	on 20225/A 4-12-52.	Whether L. & B. cannot purchase property as the Collector's nominee	19.

H.T.D.

12/6

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16/6

Office of the L.L.A.

Bombay Ferries and
Inland Vessels
Act, 1868.

Under the Indian 'taes Application of Law Order, 1948 which came into force with effect from 28th July 1948 the Bombay Ferries and Inland Vessels Act, 1868 was extended to the Bhors state territory and the corresponding law in force in that state was repealed. The ferry on the river Amba between Fali and Bumbharrot villages was declared a public ferry under section 2; it has been further declared to vest in the local body under section 21. This Act does not contemplate or recognise sharing of the ferries' revenue by Government with private individuals. The order of the Bhors state dated the 16th December 1947 granting half the auction amount of the ferry at river Amba to the Mardar of Bumbharrot, whether made in pursuance of any statute or otherwise must therefore be deemed to have lapsed after merger. Sri Joshi's claim to half the amount of the yearly auction money for the years 1949-50 and onwards is therefore untenable and should be refused.

H. G/-

Secretary of Legal Affairs.

U.P. to P. .D. No. 5259 dated the 8th April 1952.

N.V.D.
13/6
A.

Office of the P.I.A.

Section 14 A of the Bombay Ferries Act, 1868, applies only to conveying passengers etc. for hire.

Since in this case Shri Chantbhag is not plying the vessel for hire but for his own business, the proper section to apply to his case would be section 140 which provides as follows:

"No person shall ply any vessel on any river, stream, creek, tank, lake or other collection of water or carrying passengers for a vessel, whether for hire or not, except under a licence granted by an officer....."

The document relied upon by Shri Chantbhag is a registration certificate issued by the Collector of Salt Revenue, Bombay Presidency, under section 7 of the Bombay Coasting Vessels Act, 1838. It cannot take the place of a licence required by section 140 of the Bombay Ferries Act, 1868.

2. It must, however, be pointed out that no rules appear to have been made so far in respect of the granting of a licence under section 140. The Bombay Ferries and Inland Vessels (Conditions of Licence) Rules, 1948, define in rule 2 a licence to mean a special licence granted under sub-section (1) of section 141 of the Act. Obviously, therefore, these rules have no application to the licence as required by section 140, it would be difficult to grant him one in the absence of any form, conditions etc. having been prescribed for the purpose.

3. However, there should be no objection to informing Shri Chantbhag at this stage that his attention is invited to section 140; that since he does not possess a licence as contemplated therein the decision given by the executive Engineer is proper; and that he should abide by that decision. The draft letter has been corrected accordingly.

C/-

Remembrances of Legal Affairs.

C.P.F.O

J.R.to P.W.D. No. 9149 , dated 2nd June 1952.

N.V.D.
13/6
4c.

Office of the P.L.A.

Ben. Perrier Act,
1868

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Sections 2 and 2A

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Mamdar's right to
ferry revenue.

The District Government Pleader, Bijapur who was consulted by the Collector as regards the claim of the applicant to receive half the amount of the auction of the ferry first expressed the view (vide pp. 97-99 of the case papers) that the documents produced by the applicant did not conclusively prove his claim. Subsequently when the applicant produced the sanad, the District Government Pleader altered his opinion (pp. 109-110 *ibid*). He also relied upon the statement made by the Mamlatdar in his report at p. 73 of the case papers that under the sanad the applicant was entitled to 50% of any items of new income. Presumably the Mamlatdar is referring to the words "गान्धर्व नदी" at the bottom of the copy of the sanad at p. 41 of the papers. But it is doubtful whether these words can be interpreted so as to extend to the income derived from the running of the ferry. The preamble to the sanad refers to the predecessors of the applicant being in the enjoyment of half the share of the land revenue. The operative part thereof also refers to the bestowal of half the share of the income after deducting the expenses of the village, Sardeshmukhi, amal, judi etc. Presumably the new items of income were intended to be of the character of land revenue. The sanad in question would not therefore appear to be sufficient to prove the applicant's claim to receive half the share of the income of the ferry. It may be contended that when Mamdars have a right to river-bed Government shares with the net proceeds of a public ferry; but even then that argument would not be available to the present Mamdar as his man is a *harikati* man.

2. Even assuming that the applicant has got a right to receive the income, such right cannot be said to have been recognised after the merger of the Amich State

-2-

After the application of the Bombay Terrestrial and Inland Vessels Act, 1868, the ferry at Chik-Galgalli was declared by the Collector of Bijapur as a public ferry under section 2 of the Act, and has subsequently by Government Notification, Public Works Department No. 9724/56-III, dated 18th August 1951, issued under section 2A been vested in the District Local Board, Bijapur. So condition that half the income of the ferry shall be shared with the Jahagirdar has been attached to such vesting. In fact as pointed out in S.L.A.'s opinion No. 5259, dated 8th April 1952, the Act of 1868 does not contemplate or recognize the sharing of the revenue derived from ferries with private individuals. Any such alleged right of the applicant, if any, must therefore be deemed to have expired after merger. In these circumstances there is no case for recognizing the applicant's claim.

-6/-

Secretary of Legal Affairs.

U.P. to P.S.D. No. 11563, dated the 14th July 1952.

M.V.D.
14/8
4c.

Office of the P.L.A.

Purchase at a
nominal bid

Bombay Ferries
and Inland Vessels
Act, 1868.

The question referred to P.L.A. for advice is whether it is permissible to the District Local Board to purchase in the absence of bidders at a nominal bid of Rs. 1 properties of the contractors or their sureties which are put to auction for recovery of dues in respect of public ferries vesting in the District Local Board.

Section 5 of the Bombay Ferries and Inland Vessels Act, 1868, enacts that it shall be lawful for the State Government to lease any public ferry by public auction or private contract, from year to year, or for any longer period not exceeding seven years, on such conditions as the State Government deems advisable, in which case a contract setting forth the conditions on which the ferry is held shall be executed by the contractor or farmer, and security shall be given by him for its due fulfilment, and any pecuniary forfeiture for breach of contract, inserted in the deed of contract or conditions of sale by public auction, as the case may be, may be enforced in the same manner as a demand for the land revenue under the law for the time being in force, so far as applicable. In respect of public ferries vesting in a local body the powers of the State Government under sections ~~sixth and~~ are also exercisable by that local body (vide section 21 read with schedule to the Act). It

is clear from the provision of section 5 of the Bombay Ferries and Inland Vessels Act, 1868 that the pecuniary forfeiture for breach of contract inserted in the deed of contract or the conditions of sale may be enforced as a demand for land revenue. As the recovery is to be made as if the due land revenue, all the provisions in the Land Revenue Code and Rules made thereunder, including the right of purchasing the property for a nominal bid in the absence of bidders, will apply to the recovery of the pecuniary forfeiture

and there could be no objection to the Collector's purchase of the property for a nominal bid on behalf of the District Local Board provided a due notice of such purchase is given to the defaulter and a condition to that effect is inserted in the auction sale (see Rule 129 of the Land Revenue Rules, 1921 and also *Laduran Vs. Ramdas*, 52 Bom.L.R. 263).

re/-

Remembrancer of Legal Affairs.

U.P. to L.R.L., No. 12102, dated the 23rd July 1952.

N.V.D.
14/6
40.

L.D.P. No. 20850 dt. 6-9-52,

submitted.

Please see P.L.A.'s opinion No. 12102 dated the 23rd July 1952 at pp. 16-17 ante. The P.L.D. did not communicate the opinion in full to the Collector of Holapur who had originally made the reference in question but merely informed him that:

"There is no objection to your purchasing the property for a nominal bid, provided due notice of such purchase is given to the defaulter etc." (vide letter at pp. 33-34 ante.).

The Collector has now again made a reference to Govt. observing as follows:-

"Under the letter referred to above, Govt. have replied that the properties can be purchased by the Collr. for a nominal bid. If the properties are purchased by the Collr. they will vest in Government and the P.L.D. will gain nothing. It is therefore doubtful whether the P.L.D. will agree to my purchasing the properties for a nominal bid."

He has therefore requested orders on the point whether the properties can be purchased on a nominal bid by the P.L.D. as Collector's nominee and P.L.D. had referred the matter against to P.L.A.

2. The point raised by the Collector of Holapur has been already answered in P.L.A.'s opinion No. 12102 dated 23-7-1952. Attention of P.W.D. is invited to 'A' of the said opinion.

H.V.D.
14/8
4a.

Office of the P.L.A.

Bombay Ferries and
Inland Vessels Act,
1868 -
Sections 14A and
17C.

Section 17C of the Bombay Ferries and Inland Vessels Act, 1868 provides that nothing in sections 14A to 14C and 17A and 17C shall apply in respect of any inland steam-vessel as defined in sub-section (1) of section 2 of the Inland Steam-Vessels Act, 1917. Under clause (1) of section 2 of the latter Act an "inland steam-vessel" means a steam-vessel which ordinarily plies on any inland water; and under clause (5) thereof "steam-vessel" means every description of vessel propelled wholly or in part by agency of steam. It is, therefore, clear that a steam-vessel intended to ply on the Bhima river between Pandharpur and Juhuja would be an inland steam-vessel within the meaning of and nothing contained in section 14A of the Bombay Ferries and Inland Vessels Act would apply in relation to such vessel. Consequently no licence under section 14A would be necessary, much less can any person who desires to ply such vessel be required to obtain it. The view taken by the Public Works Department is correct.

rc/-

Remembrancer of Legal Affairs.

U.O. to P.L.A. No. 17538/A, dated the 24th
October 1952.

H.V.D.
14/6
40.

Office of the P.L.A.

Bombay Ferries and
Inland Vessels Act,
1868 -
sections 141 and
170.

Section 170 of the Bombay Ferries and Inland Vessels Act, 1868 provides that nothing in sections 141 to 143 and 171 and 170 shall apply in respect of any inland steam-vessel as defined in sub-section (1) of section 2 of the Inland Steam-vessels Act, 1917. Under clause (1) of section 2 of the latter Act an "inland steam-vessel" means a steam-vessel which ordinarily plies on any inland water; and under clause (5) thereof "steam-vessel" means every description of vessel propelled wholly or in part by agency of steam. It is, therefore, clear that a steam-vessel intended to ply on the Bhima river between Landharpur and Fuluja would be an inland steam-vessel within the meaning of and nothing contained in section 141 of the Bombay Ferries and Inland Vessels Act would apply in relation to such vessel. Consequently no licence under section 141 would be necessary, much less can any person who desires to ply such vessel be required to obtain it. The view taken by the Public Works Department is correct.

RG/-

Secretary of Legal Affairs.

U.P. to L. .D. No. 17538/A, dated the 24th

October 1952.

H.V.D.
14/8
4c.

L.L.P. No. 20850 dt. 6-9-52.

submitted.

Please see P.L.A.'s opinion No. 12102 dated the 23rd July 1952 at pp. 15-17 ante. The S. D. did not communicate the opinion in full to the Collector of Holapur who had originally made the reference in question but merely informed him that:

"There is no objection to your purchasing the property for a nominal bid, provided due notice of such purchase is given to the defaulter etc." (vide letter at pp. 33-34 ante.).

The Collector has now again made a reference to Govt. observing as follows:-

"Under the letter referred to above, Govt. have replied that the properties can be purchased by the Collr. for a nominal bid. If the properties are purchased by the Collr. they will vest in Government and the S.L.D. will gain nothing. It is therefore doubtful whether the S.L.D. will agree to my purchasing the properties for a nominal bid."

He has therefore requested orders on the point whether the properties can be purchased on a nominal bid by the S.L.D. as Collector's nominee and S.L.D. had referred the matter against to P.L.A.

2. The point raised by the Collector of Holapur has been already answered in P.L.A.'s opinion No. 12102 dated 23-7-1952. Attention of S.V.D. is invited to 'A' of the said opinion.

S.V.D.
14/8
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Office of the P.L.A.

Public ferry
in Kankaria
tank.

Bombay
Ferries
Act, 1868.

It is true that the Kankaria Tank situate within the limits of the City of Ahmedabad vests in the Ahmedabad Municipality. But the question is whether the Municipality can run a ferry service in the tank merely on the ground that it vests in it.

2. Under section 2 of the Bombay Ferries Act, 1868, it shall be lawful for the State Government to declare by notification what ferries within the limits of Bombay shall be deemed public ferries, and also, by notification from time to time, to establish any new public ferry or discontinue any existing public ferry. Section 2A provides that it shall be lawful for the State Government to declare by notification in the Official Gazette that any public ferry notified under section 2 shall vest in the local body or jointly in the local bodies, exercising authority over the area or areas, as the case may be, in which such ferry is situate and thereafter such local body or bodies shall exercise in respect of such ferry all the powers specified in the Schedule to this Act. It is clear from this provision that to entitle the Municipality to run a public ferry in the tank Kankaria Tank Government must first establish a public ferry in the tank under section 2 and thereafter declare under section 2A that it vests in the Ahmedabad Municipality so that it may exercise all the powers specified in the Schedule to this Act. It is apparent that vesting of the Kankaria tank in the Municipality is different from establishing a public ferry in that tank and running it. Consequently, the procedure prescribed under sections 2 and 2A must be followed before the Ahmedabad Municipality can run a public ferry service in the Kankaria tank.

H.V.D
14/6
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* C/-

Secy. to P.L.A. No. 18137/A, dated the 1st November 1952.

Remembrancer of Legal Affairs.

Office of the D.L.A.

The query in question was made by the Collector of the Chelapur because of the fact that M.L.A.'s opinion No. 12102, dated the 23rd July 1952 was not correctly conveyed to him. M.L.A. had advised that there could be no objection to the Collector's purchasing the property for a normal bid on behalf of the District Local Board whereas Government in L.F.D. informed the Collector that "there could be no objection to this purchasing the property for a normal bid," omitting the words "on behalf of the District Local Board".

If the property is purchased on behalf of the District Local Board, it would vest in the District Local Board and the District Local Board will have no cause to complain. It will also be possible for the District Local Board to purchase the property itself as the Collector's nominee for sub-rule (4) of rule 129 of the Land Revenue Rules in terms says that "it shall be lawful for the Collector or his nominee to bid at the auction and purchase the land or other property for a bid of rupee one."

-6/-

Remembrancer of Legal Affairs.

U.P. to L.D.A. , No. 20298/A, dated the 4th December 1952

H.V.D.
14/12/52
6